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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - CHAIRMAN
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

IN THE MATTER OF THE APPLICATION OF
SUNZIA TRANSMISSION, LLC, IN
CONFORMANCE WITH THE
REQUIREMENTS OF ARIZONA REVISED
STATUTES 40-360, ET. SEQ., FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AUTHORIZING THE
SUNZIA SOUTHWEST TRANSMISSION
PROJECT, WHICH INCLUDES THE
CONSTRUCTION OF TWO NEW 500KV
TRANSMISSION LINES AND ASSOCIATED
FACILITIES ORIGINATING AT A NEW
SUBSTATION (SUNZIA EAST) IN LINCOLN
COUNTY, NEW MEXICO, AND
TERMINATING AT THE PINAL CENTRAL
SUBSTATION IN PINAL COUNTY,
ARIZONA. THE ARIZONA PORTION OF
THE PROJECT IS LOCATED WITHIN
GRAHAM, GREENLEE, COCHISE, PINAL
AND PIMA COUNTIES.

DOCKET NO. L-00000YY-15-0318-00171

**COMMISSION STAFF'S RESPONSE
TO PROCEDURAL ORDER**

Arizona Corporation Commission

DOCKETED

SEP 18 2015

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On September 11, 2015, the Chairman of the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") issued a procedural order in the above captioned application by SunZia LLC for a Certificate of Environmental Compatibility ("CEC"). Among other things, the procedural order posited a question regarding the issue of representation of entities before the Siting Committee by non-attorneys. As stated within the procedural order, the issue is:

A.A.C. R14-3-208(F) provides that individual parties may appear at the hearing on their own behalf, whereas all other persons who are parties shall appear only by a licensed attorney. May a domestic nonprofit corporation or association authorized by A.R.S. § 40-360.05(A)(3) to become a party appear, present oral testimony and cross-examine witnesses during the hearing without being represented by an attorney?

Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") hereby provides its response to the question that was posed. Staff believes that a non-attorney member of a domestic nonprofit corporation satisfying the requirements of A.R.S. § 40-360.05(A)(3) may

1 represent the entity before the Siting Committee. Further, Staff would not object to the participation
2 of such entities through the representation of an authorized member.

3 Several potential parties have already provided indications that this issue will impact whether
4 and how they participate in this application. One such group, the Cascabel Working Group
5 ("Cascabel") has additionally provided to parties and potential parties a memorandum setting out
6 their analysis of the issue on September 14, 2015. All of these early submissions by groups interested
7 in this issue suggest that they would each satisfy the requirements of A.R.S. § 40-360.05(A)(3)
8 (hereinafter such a qualifying entity will be referred to as an "Environmental Group"). In general, the
9 Environmental Groups' submissions contend that they should be permitted to be represented by non-
10 attorney members pursuant to Supreme Court Rule 31(d)(28) which provides:

11 In matters before the Arizona Corporation Commission, a public service corporation,
12 an interim operator appointed by the Commission, or a non-profit organization may
13 be represented by a corporate officer, employee, or a member who is not an active
14 member of the state bar if:

14 (A) the public service corporation, interim operator, or non-profit organization has
specifically authorized the officer, employee, or member to represent it in the
particular matter,

15 (B) such representation is not the person's primary duty to the public service
16 corporation, interim operator, or non-profit organization, but is secondary or
incidental to such person's duties relating to the management or operation of the
public service corporation, interim operator, or non-profit organization, and

17 (C) the person is not receiving separate or additional compensation (other than
18 reimbursement for costs) for such representation.

19 Notwithstanding the foregoing provisions, the Commission or presiding officer may
20 require counsel in lieu of lay representation whenever it determines that lay
representation is interfering with the orderly progress of the proceeding, imposing
undue burdens on the other parties, or causing harm to the parties represented.

21 AZ ST S CT Rule 31(d)(28). Staff would note that the Supreme Court rule expands upon provisions
22 already contained within A.R.S. § 40-243(B) by extending it to members of organizations other than
23 solely public service corporations. The practice of permitting non-attorneys, duly authorized by the
24 organization, to represent their organizations in proceedings before the Commission is an ordinary
25 practice. However, Staff would note that the Supreme Court rule, as well as the statute, speaks to
26 proceedings before the Commission. While there is substantial interrelation between a proceeding
27 before the Siting Committee, which approves or denies an application for a CEC, and the
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1 Commission, which ultimately will review approvals and denials of a CEC by the Siting Committee,
2 the two bodies are separate entities.

3 Nonetheless, the members of an Environmental Group could intervene individually. A.R.S. §
4 40-360.05(A)(4). It would be reasonable to expect that the participation of individual members to an
5 Environmental Group would be as appropriate to a proceeding of the Siting Committee as
6 participation by the Environmental Group of which they are members. However, requiring such an
7 exercise would seem both inefficient and at cross purposes with the intent to be achieved by other
8 provisions of the siting statutes. For example, the siting statutes contemplate that the Siting
9 Committee will develop an evidentiary record that is composed of material and non-repetitive
10 evidence. A.R.S. § 40-360.04(C). Compelling like-minded individuals, gathered into an
11 organization to more effectively express their views, to instead provide their perspective individually
12 would appear to be inconsistent with the efficient gathering of non-repetitive evidence under the
13 circumstances presented here.

14 The procedural rules applicable specifically to the Siting Committee would appear to provide
15 a solution to this issue. Pursuant to A.A.C. R14-3-201(E)(6), the Chairman of the Committee, acting
16 in the capacity of the Presiding Officer may render various procedural determinations. One such
17 procedural matter the Presiding Officer may resolve prior to the initiation of hearings is the
18 consolidation of the representation of nongovernmental parties having similar interests. A.A.C. R14-
19 3-202(B).

20 Staff believes that the Chairman, acting as the Presiding Officer under the rules, as a
21 procedural matter, and in consideration of the efficient presentation of evidence and processing of a
22 CEC application, has the authority to approve the consolidated representation of the membership of
23 an Environmental Group by an individual member of the Environmental Group, notwithstanding that
24 the member is a non-attorney. Staff would further observe that it would be appropriate to require
25 each member-representative for an Environmental Group to file in the docket a writing confirming


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1 that they have been authorized by the Environmental Group to represent the entity for the purposes of
2 the CEC proceedings.

3 RESPECTFULLY SUBMITTED this 18th day of September, 2015.

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6 Charles H. Hains
7 Attorney, Legal Division
8 Arizona Corporation Commission
9 1200 West Washington Street
10 Phoenix, Arizona 85007
11 (602) 542-3402

9 Original and twenty-five (25) copies of the
10 foregoing filed this 18th day of September,
2015, with:

11 Docket Control
12 Arizona Corporation Commission
13 1200 West Washington Street
Phoenix, Arizona 85007

14 Copy of the foregoing mailed this
15 18th day of September, 2015, to:

16 Chairman Thomas Chenal
17 Arizona Power Plant & Transmission
18 Line Siting Committee
Attorney General's Office
1275 West Washington Street
Phoenix, Arizona 85007

19 Albert H. Acken
20 Samuel L. Lofland
21 RYLEY CARLOCK & APPLEWHITE
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4417

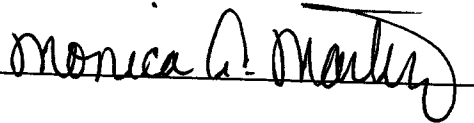
22 Lawrence V. Robertson, Jr.
23 Of Counsel to MUNGER CHADWICK, PLC
P.O. Box 1448
24 Tubac, Arizona 85646-1448

25 Lisa Atkins
26 ARIZONA STATE LAND DEPARTMENT
1616 West Adams Street
Phoenix, Arizona 85007

27 ...

28 ...

- 1 Phillip Ronnerud
GREENLEE COUNTY
2 253 Fifth Street
P.O. Box 908
3 Greenlee, Arizona 85533
- 4 Joe Goodman
GRAHAM COUNTY
5 General Services Building, 2nd Floor
921 Thatcher Blvd.
6 Safford, Arizona 85546
- 7 Mary Gomez
COCHISE COUNTY
8 1415 Melody Lane, Bldg. E
Bisbee, Arizona 85603
- 9 Steve Abraham
10 PINAL COUNTY
31 North Pinal Street, Bldg. F
11 Florence, Arizona 85132
- 12 Chuck Huckleberry
PIMA COUNTY
13 130 West Congress Street, 10th Floor
Tucson, Arizona 85701
- 14 Rick Miller
15 CITY OF COOLIDGE
131 West Pinkley Avenue
16 Coolidge, Arizona 85228
- 17 Norm "Mick" Meader, Co-Chair
CASCABEL WORKING GROUP
18 3443 East Lee Street
Tucson, Arizona 85716

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20
21 
22
23
24
25
26
27
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